

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

LEONARD UMINA,

Plaintiff,

vs.

RODERICK L. MacKENZIE, LUCAS  
LUMINA, and DOES 1-50,

Defendants.

CV 18-175-M-JCL

ORDER

Defendants Roderick L. MacKenzie and Lucas Lumina removed this action to this Court pursuant to 28 U.S.C. § 1441(a) and (b). They assert this Court possesses diversity jurisdiction over the action under 28 U.S.C. § 1332(a).

The action Defendants removed was pending in the Superior Court of the State of California, County of Sacramento. (Doc. 1 at ¶ 1; Doc. 1-3.) But the place where the removed state court action was pending limits and dictates the specific United States District Court to which the action may be removed. Specifically, the removal statute permits removal only “to the district court of the United States for the district and division embracing the place where [the state court] action is pending.” 28 U.S.C. § 1441(a).

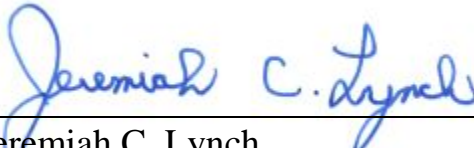
In this case, the only district court of the United States which embraces

Sacramento County, California – the place where the action that Defendants seek to remove is pending – is the United States District Court, Eastern District of California. 28 U.S.C. § 84. Therefore, Defendants’ removal of this case to the United States District Court, District of Montana, is not permitted under 28 U.S.C. § 1441(a), and this action is now filed in an improper venue.

Because this action is now pending in the wrong venue, the circumstances invoke the provisions of 28 U.S.C. § 1406(a). “The District Court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a). The district court has discretion in determining whether to either dismiss or transfer an action under § 1406(a). *King v. Russell*, 963 F.2d 1301, 1304 (9<sup>th</sup> Cir. 1992).

Based on the forgoing, IT IS HEREBY ORDERED that this action is transferred to the Eastern District of California pursuant to section 1406(a).

DATED this 11th day of October, 2018.

  
\_\_\_\_\_  
Jeremiah C. Lynch  
United States Magistrate Judge